

Message Text

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TAGS: OCON, UN, PFOR, SHUM, TZ
SUBJECT: HUMAN RIGHTS: TANZANIA ITEM AT 5TH UN CONGRESS

REF: A) STATE 211712 (NOTAL); B) GENEVA 6786 (NOTAL)

1. SUMMARY: REVISION OF TANZANIAN JUDICIAL SYSTEM IS IN PROCESS, BUT FINAL CHANGES NOT YET DECIDED ON. MODIFICATIONS TO ADAPT INHERITED BRITISH-STYLE JUDICIAL SYSTEM TO TANZANIAN SOCIALIST SOCIETY ARE PROBABLE, BUT CONCEPTS OF IMPARTIAL JUSTICE AND PROTECTION OF INDIVIDUAL FROM GOVERNMENTAL ABUSE LIKELY TO REMAIN AT LEAST AS IDEALS, THOUGH RIGHTS OF INDIVIDUALS OR WHAT ARE SEEN AS LEGAL TECHNICALITIES NOT LIKELY TO STAND IN WAY OF BROAD GOVERNMENT SOCIAL POLICIES AND GOALS. END SUMMARY.

2. IN REPLY TO QUESTION RAISED REF. (A), TANZANIAN GOVERNMENT IS REVIEWING ITS JUDICIAL SYSTEM IN LIGHT OF ITS SOCIALIST POLICIES BUT CHANGES HAVE NOT YET BEEN DECIDED ON.

3. FIVE-MAN JUDICIAL REVIEW COMMISSION, HEADED BY PIUS MSEKWA, VICE CHANCELLOR OF UNIVERSITY OF DAR ES SALAAM, WAS ESTABLISHED AT END OF 1974 TO REVIEW THE TANZANIAN JUDICIAL SYSTEM INHERITED FROM BRITAIN IN THE LIGHT OF THE NATION'S
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SOCIALIST POLICY AND INSTITUTIONS. COMMISSION HAS BEEN

TRAVELLING ABOUT COUNTRY TO DISCUSS JUDICIAL SYSTEM, AND HAS SOLICITED RECOMMENDATIONS FROM TANU PARTY AND OTHER ORGANIZATIONS, BUT HAS NOT YET COME OUT WITH ANY RECOMMENDATIONS.

4. THERE HAS BEEN SOME PUBLIC DISCUSSION AS TO WHETHER THE INSTITUTION OF PRIVATE ATTORNEYS SHOULD BE SCRAPPED, ON GROUNDS THAT PRIVATE PRACTICE OF LAW IS CAPITALIST ACTIVITY OF SERVICE ONLY TO THE RICH. AS DEPARTMENT AWARE, PRIVATE ATTORNEYS ARE NOT ALLOWED TO PRACTICE IN ZANZIBAR, OR TO APPEAL IN ZANZIBAR COURTS, AND SOME PEOPLE IN MAINLAND TANZANIA WOULD LIKE TO FOLLOW SUIT. ATTORNEY GENERAL MARK BOMANI RECENTLY LAMBASTED THE MEMBERS OF THE TANGANYIKA LAW SOCIETY BECAUSE OF THE ALLEGED BEHAVIOR OF SOME ATTORNEYS. HE REMINDED THEM, INTER ALIA, THAT ATTORNEYS ARE OFFICERS OF THE COURT AND HAVE A DUTY TO THE COURT WHICH IS GREATER THAN THEIR DUTY TO THEIR CLIENT. IN PARTICULAR, HE WARNED THEM THAT QTE WHERE YOUR CLIENT CONFESSES TO YOU THAT HE HAS COMMITTED THE OFFENSE IN QUESTION UNQTE, ATTORNEY MUST TALK HIS CLIENT INTO PLEADING GUILTY OR WITHDRAW FROM CASE.

5. MOST CRITICISM OF COURT SYSTEM HAS BEEN OF LONG DELAYS AND REPEATED POSTPONEMENTS IN HEARING CASES, WITH DEFENDENTS OFTEN ABLE TO POSTPONE TRIALS INDEFINITELY BY BRIBING POLICE TO QTE MISLAY UNQTE RECORDS. THIS, AMONG OTHER THINGS, LED TO MAJOR SHAKEUP IN POLICE IN AUGUST, WITH OVER A HUNDRED OFFICERS, INCLUDING MUCH OF TOP BRASS, RETIRED QTE FOR THE GOOD OF THE SERVICE. UNQTE.

6. COMMENT: WE THINK IT PROBABLE THAT FAIRLY SUBSTANTIAL CHANGES IN THE JUDICIAL SYSTEM WILL BE MADE, BUT ARE LIKELY TO BE IMPLEMENTED SLOWLY. TANZANIA IS SEEKING TO REMOULD ITS SOCIETY IN A SOCIALIST PATTERN, AND INSTITUTIONS INHERITED FROM ITS COLONIAL, CAPITALIST PAST ARE CONSIDERED, IN THE LONG RUN, AS INHERENTLY INAPPROPRIATE TO THE NEW SOCIETY BEING BUILT. EVEN UNDER EXISTING SYSTEM, INDIVIDUAL RIGHTS (ESPECIALLY PROPERTY RIGHTS) HAVE NOT BEEN ALLOWED TO STAND IN WAY OF GOVERNMENT'S BROAD SOCIAL POLICIES AND GOALS (FORCED HERDING OF PEOPLE INTO VILLAGES IS AN EXAMPLE), AND, AS ELSEWHERE IN WORLD, IT IS NOT EASY FOR INDIVIDUALS TO FIGHT LIMITED OFFICIAL USE

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CORRUPT OR ARROGANT OFFICIALS DESPITE GOVERNMENT IDEALS, OR EXERT RIGHTS WHEN SECURITY INTERESTS ARE RAISED. NEVERTHELESS, TANZANIAN OFFICIALS, INCLUDING PRESIDENT NYERERE, ARE CONCERNED THAT THE INDIVIDUAL -- OF ALL RANKS OF LIFE -- SHOULD GET SUBSTANTIAL JUSTICE AND HAVE SOME PROTECTION AGAINST THE ABUSE OF AUTHORITY BY GOVERNMENT OFFICIALS. WHILE FORM THAT FORTHCOMING CHANGES IN JUDICIAL SYSTEM WILL TAKE IS NOT CLEAR, SEEMS PROBABLE THAT EFFORTS WILL BE MADE TO REDUCE

THE ADVANTAGES OF WEALTHIER CITIZENS IN COURT (ABILITY HIRE ATTORNEYS, ETC.), TO FORMALLY SUBORDINATE PROPERTY RIGHTS TO NATIONAL SOCIALIST POLICIES, AND TO REDUCE OPPORTUNITIES OF ACCUSED PERSONS TO RESORT TO WHAT GENERAL PUBLIC VIEWS AS QTE TECHNICALITIES. UNQTE WE WILL FORWARD DETAILS OF CHANGES AS WE LEARN THEM. THIS YEAR'S AMENDMENTS TO TANZANIAN CONSTITUTION HAVE NOT ALTERED PROVISIONS DEALING WITH JUDICIARY NOR STATEMENT IN PREAMBLE THAT RIGHTS OF CITIZENS ARE BEST MAINTAINED QTE WHERE THE COURTS OF LAW ARE FREE AND IMPARTIAL. UNQTE

7. FURTHER BACKGROUND ON ADMINISTRATION OF CIVIL RIGHTS IN TANZANIA IS CONTAINED IN THE ADMITTEDLY SYMPATHETIC AND PRO-SOCIALIST STUDY BY ROBERT MARTIN ("PERSONAL FREEDOM AND THE LAW IN TANZANIA", OXFORD UNIVERSITY PRESS, NAIROBI, 1974), TO WHICH INTERESTED PARTIES MAY WISH TO REFER. LEVIN

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